

8.406-4

shall follow the procedures at 8.406-4 when terminating an order for cause.

8.406-4 Termination for cause.

(a)(1) An ordering activity contracting officer may terminate individual orders for cause. Termination for cause shall comply with FAR 12.403, and may include charging the contractor with excess costs resulting from repurchase.

(2) The schedule contracting office shall be notified of all instances where an ordering activity contracting officer has terminated for cause an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

(b) If the contractor asserts that the failure was excusable, the ordering activity contracting officer shall follow the procedures at 8.406-6, as appropriate.

(c) If the contractor is charged excess costs, the following apply:

(1) Any repurchase shall be made at as low a price as reasonable, considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____
[insert contractor's name] under Order _____
[insert number] under Contract _____ [insert number].

(2) When excess costs are anticipated, the ordering activity may withhold funds due the contractor as offset security. Ordering activities shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

(3) If an ordering activity is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the contractor.

(i) The notice shall include the following information about the terminated order:

- (A) Name and address of the contractor.
- (B) Schedule, contract, and order number.
- (C) National stock or special item number(s), and a brief description of the item(s).
- (D) Cost of schedule items involved.

- (E) Excess costs to be collected.
- (F) Other pertinent data.
- (ii) The notice shall also include the following information about the purchase contract:
 - (A) Name and address of the contractor.
 - (B) Item repurchase cost.
 - (C) Repurchase order number and date of payment.
 - (D) Contract number, if any.
 - (E) Other pertinent data.

(d) Only the schedule contracting officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any supplies or services covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor, unless terminated for the convenience of the Government by the ordering activity contracting officer.

(e) *Reporting.* An ordering activity contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

[69 FR 34234, June 18, 2004, as amended at 75 FR 60260, Sept. 29, 2010]

8.406-5 Termination for the Government's convenience.

(a) An ordering activity contracting officer may terminate individual orders for the Government's convenience. Terminations for the Government's convenience shall comply with FAR 12.403.

(b) Before terminating orders for the Government's convenience, the ordering activity contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

(c) Only the schedule contracting officer may modify the schedule contract to terminate any, or all, supplies or